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FUJIAN JINHUA INTEGRATED CIRCUIT CO., LTD.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED MICROELECTRONICS
CORPORATION, *et al.*,

Defendants.

CASE NO.: 3:18-cr-00465-MMC

**DEFENDANT FUJIAN JINHUA
INTEGRATED CIRCUIT CO., LTD.'S
OPPOSITION TO THE
GOVERNMENT'S
MOTION *IN LIMINE* NO. 5 TO
PROTECT TRADE SECRETS AT
TRIAL**

Judge: The Honorable Maxine M. Chesney
Trial Date: February 14, 2022

Hearing Date: January 18, 2022
Time: 10:00 a.m.

1 **I. INTRODUCTION**

2 The government's Motion *in Limine* No. 5 ("Motion" or "Mot.") seeks an order from the
3 Court requiring that: (1) any exhibits containing alleged trade secrets not be published to the gallery
4 and (2) any testimony taken about alleged trade secrets "be kept to a sufficient level of generality
5 that would prevent the public from discerning the substance of the trade secrets." (Mot. at 4:11-16.)
6 Jinhua does not oppose the Court taking appropriate steps to protect what the government contends
7 to be confidential information, but the government's proposal threatens to impermissibly limit
8 Jinhua's ability to present a defense, is unworkable, and could improperly suggest to the jury that
9 certain documents are worthy of additional protection and therefore, may in fact be, trade secrets.
10 This would unfairly prejudice Jinhua and potentially taint the jury.

11 **II. ARGUMENT**

12 A. **The Government's Motion Seeking an Order Limiting the Display of Alleged**
13 **Trade Secrets Could Potentially Taint the Jury.**

14 The statutory scheme under 18 U.S.C. §1835 anticipates the court entering orders that are
15 "necessary and appropriate" to preserve the confidentiality of documents that the government
16 believes to be trade secrets. The government seeks to treat an undefined set of documents—labeled
17 as "trade secrets" in its Motion—differently than the remainder of the documents that will be entered
18 into evidence or otherwise used at trial. The government's plan requests that when the parties seek
19 to introduce an exhibit that the government contends reflects an alleged "trade secret," the exhibits
20 should only be displayed to the parties, the jury, and the Court, but not the gallery.

21 Jinhua is concerned that, in treating these undefined materials differently than other evidence
22 and exhibits, the jury could be left with the impression that these documents are worthy of more
23 protection and that therefore they must be trade secrets. Even more prejudicially, that message may
24 appear to have the Court's imprimatur. One of the key questions for the jury—whether the
25 documents allegedly taken by former Micron employees from Micron are in fact trade secrets—
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1 could therefore be predetermined by the manner in which the parties and the Court treat them during
2 trial.¹

3 Counsel for Jinhua has met and conferred with the government, and communicated that the
4 government's proposal may be acceptable to the extent the jury is unable to see the monitors that
5 display materials to the public, such that that the jury will be unaware that some documents are
6 treated differently than others. For example, the parties may be able to accomplish this if the
7 courtroom deputy or trial technology experts running the courtroom technology have a pre-set list of
8 documents which are not to be publicly displayed. Jinhua is willing to further discuss this issue at
9 the pretrial conference when the parties discuss trial logistics, trial technology and the courtroom
10 setup.

11 **B. The Government's Motion Seeking an Order Limiting Testimony about**
12 **Alleged Trade Secrets Infringes on Jinhua's Ability to Present Its Defense.**

13 The government's second proposal, to limit the testimony of witnesses and the questions
14 Jinhua can ask of these witnesses, would unfairly prejudice Jinhua. This would abridge Jinhua's
15 right to a fair trial because it requires the defense to curtail questions it may want to ask or testimony
16 it may try to elicit. In *United States v. Nosal*, CR-08-0237 EMC, 2013 WL 11327121, at *5–6 (N.D.
17 Cal. Mar. 29, 2013), this Court denied the government's motion *in limine* seeking to limit the scope
18 of testimony to prevent the audience from hearing testimony on any of the information contained in
19 sensitive documents.

20 Moreover, the government's proposal presupposes that the defense will be able to accurately
21 predict the testimony that will be elicited by the government during its direct examinations, as well
22 as the scope and content of its cross examinations. As the Court well knows, however, the nature of
23 live testimony at trial is unpredictable and spontaneous. An accurate prediction of how the testimony
24 will come in at trial is impossible. The defense should not be hamstrung by an order requiring it to

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26 ¹ It is worth noting that the technology that Jinhua and UMC were trying to develop in the
27 DRAM project at issue in this case was already several “generations” old—that is, it was not cutting
28 edge technology at the time. And that was in 2016. It is now five years later, and it is questionable
whether *any* of these so-called “trade secrets” continue to have significant value now, as they are
years removed from their initial development.

1 curtail its trial strategy merely to assuage Micron's concerns about the discussion of legacy
2 technology that is now three generations old and whose key features are thus easily ascertainably by
3 those in the industry.

4 **III. CONCLUSION**

5 This Court's interpretation of 18 U.S.C. § 1835 must strike the appropriate balance between
6 Micron's desire to protect its trade secrets and Jinhua's rights to a fair trial and to present its defense.
7 The government's proposed protocol with respect to documents has the potential to provide the
8 correct balance if the jury is unaware of the differing treatment of documents. The Court should
9 deny the government's Motion to the extent it seeks to limit testimony about trade secrets. This
10 proposal would unfairly prejudice Jinhua right to a fair trial by improperly limiting its ability to
11 present key exculpatory evidence and constraining its cross examination of the government's
12 witnesses.

13 Dated: December 22, 2021

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